

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 78 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

COT OIL CORPORATION

Versus

PATEL VALJI ABAJI

Appearance:

MR AR THACKER for Petitioner
MR YS MANKAD for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 25/08/2000

ORAL JUDGEMENT

1. The present appellant was defendant and present respondent was original plaintiff. The present plaintiff filed a suit, being Regular Civil Suit No. 1 of 1979, in the court of Civil Judge (JD) at Bhuj stating that on 6th

January, 1978 he entered into a contract with the defendant for the purchase of cotton 'Shanker-4' at the rate of Rs. 192.25 ps for 20kgs and the whole contract was for the supply of 200 maunds of cottons to the present appellant - original defendant. The original defendant paid Rs. 1,000/- as Earnest Money to the plaintiff. In pursuance of this oral contract, the plaintiff respondent supplied 82 maunds of cottons to the defendant worth Rs.15,764.50ps and the amount was paid to the plaintiff by the defendant. Thereafter, even after repeated requests, defendant did not, in pursuance of the above contract, took the delivery of remaining quota of cotton and, therefore, ultimately, plaintiff served the defendant a Notice dated 25th September, 1978, and informed the defendant to effect the delivery of the remaining cotton and to pay the price of the same according to the contract entered into. Defendant neither replied to the said notice nor performed his part of contract. Ultimately, the plaintiff respondent herein sold 97 maunds of cotton to one Bhagwati Cotton Company of Anjar at the rate of Rs. 115 per maunds (20 kgs) on 12th December, 1978 and realised the amount of Rs. 11,155.00. Comparing this price with the contractual price with the defendant, the plaintiff suffered a loss of 7,493.25 ps. after deducting the amount of Rs.1,000/which was given by the defendant to the plaintiff as earnest money. Therefore, the plaintiff filed a suit for the recovery of Rs. 6,493.25ps being the damages for the breach of contract incurred and Rs. 506.75ps being expenses incurred and Rs.510 as other expenses incurred for the transportation. In all, the suit came to be filed for the recovery of Rs. 7,000/-. The defendant filed written statement and admitted that though the contract was entered, but the time was essence of the contract, and the plaintiff was bound by a promise to deliver goods of cotton till Chaitra Sud Punam, but upto this period the plaintiff could give delivery of 82 maunds of cotton, for which the defendant paid the plaintiff. After full-fledged trial in the suit, learned Second Jt. Civil Judge (JD), Bhuj, decreed the suit of the plaintiff to the extent of Rs. 6,492.25ps being the amount of damages for the contract, negativing the amount of Rs.506.75 and amount of expenses claimed by the plaintiff, which according to the trial judge, the plaintiff could not prove. An Appeal bearing No. 148 of 1981, came to be filed by the defendant in the Court of District Judge, Kachchh at Bhuj, being aggrieved by the judgment and decree of the Second Jt. Civil Judge (JD), in Regular Civil Suit No.1 of 1979, decreed in favour of the plaintiff. However, learned District Judge, Kachchh at Bhuj, vide his judgment and order dated 30.6.1984,

dismissed the Appeal with costs and, therefore, this Second Appeal is filed by original defendant i.e. the appellant herein.

2. While admitting the Appeal, following two substantial questions of law were framed by this Court :

- (i) Whether in the facts and circumstances of the case, the time was essence of the contract?
- (ii) Whether in the facts and circumstances of the case, the appellant committed breach of the contract as alleged?

3. Learned Advocate Mr. A.R. Thakker on behalf of the appellant and learned Advocate Mr. Y.S. Mankad, on behalf of the respondent, were heard at length.

4. Both the courts below after appreciating the evidence on record and after appreciating the documents and other circumstances, came to the conclusion that the time was not essence of the contract, and that, in fact, the present appellant committed breach of the contract in not taking the delivery of the cotton. Both the courts below came to the conclusion that there was no reason for the plaintiff to sell the cotton to M/s Bhagwati Cotton Company of Anjar, Kuchchh, if the cotton was not ready. Both the courts below also concluded that there was no reason for the plaintiff not to give cotton to the defendant if the cotton was ready and to sell the same at the lower price. These are questions of fact and after appreciating the facts and after appreciating the evidence, these questions of facts were concurrently decided by both the courts below in favour of the plaintiff and, therefore, there is no scope of reappreciating the evidence at the stage of the Second Appeal. That both the courts below have held that on fact, the time was not essence of the contract and that appellant committed the breach of the contract and since both the courts below decided the issues of fact, no interference at all is required in the conclusions at this stage, which would otherwise require reappreciation of evidence.

5. Except above referred substantial questions of law, no other substantial question of law has been raised and the above two questions have been rightly decided by both the courts below in favour of the plaintiff as discussed above.

6. In this view of the matter, this Appeal has no substance and requires to be dismissed.

7. For the above said reasons, Appeal stands dismissed with no order as to costs.

(J.R. Vora, J.)

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